Chapter CXCVIII.[1]

PRESENTATION OF TESTIMONY IN AN IMPEACHMENT TRIAL.

1. Attendence of witnesses. Sections 484–486.
2. Examination of witnesses. Sections 487–489.
3. Rulings of presiding officer as to evidence. Sections 490, 491.
4. Cross-examination, rebuttal evidence, etc. Section 492.

484. Lists of witnesses to be subpoenaed in a trial of impeachment are supplied by the managers and respondent respectively to the Sergeant at Arms of the Senate.

After the filing of lists of witnesses to be subpoenaed in a trial of impeachment, further witnesses may be subpoenaed on application of the managers or the respondent made to the Presiding Officer.

On August 6, 1912,[2] in the Senate, sitting for the impeachment trial of Robert W. Archbald, Mr. Henry D. Clayton, of Alabama, chairman of the managers for the House of Representatives, said:

On behalf of the managers of the House, I desire to say that the managers will furnish—I presume that it ought to be furnished to the Secretary of the Senate—a list of the witnesses whom the managers desire to have subpoenaed on behalf of the prosecution, if I may so term the side which is occupied by the managers on the part of the House. Am I correct in the view that we shall furnish this list to the Secretary of the Senate?

The President pro tempore replied:

The Presiding Officer is not advised as to what are the precedents, but as the Sergeant at Arms is to execute the order, the Chair will suggest that the Sergeant at Arms is the proper person to whom the list should be supplied.

Mr. Manager Clayton inquired:

Then Mr. President, under the intimation of the Chair, the managers beg to say at this time that they will in due time furnish the Sergeant at Arms a list of the witnesses they desire subpoenaed, and they expect to be ready, by having the witnesses here and ready otherwise to proceed with the cause, if it meets the pleasure of the Senate, on the 3rd day of December next.

Mr. Manager Clayton further inquired:

Mr. President there is one other thing that the managers desire to know. There is no settled practice, it appears from my rather imperfect examination of the precedents in the case, but I have reached the conclusion from such examination as I have been able to make that after this list is furnished by the managers and the list furnished on behalf of the respondent by the

[1] Supplementary to Chapter LXVIII.

[2] Second session Sixty second Congress, Record, p, 10139.

respondent that then it is the practice or the usage of the Senate, under, I suppose, certain discretion vested in the Presiding Officer, to entertain and to direct the issuance of subpoenas for other witnesses whose names may not appear on the list which is furnished in the first instance; and believing that to be the practice and believing that the managers should have that right, I shall not insist upon the proposition which I offered in the beginning of the cause to-day; that is, to provide that these additional witnesses might be subpoenaed on application made by the managers or the respondent, as the case might be, but that the application should be made to the Presiding Officer, the Presiding Officer having the discretion and presumably the authority to grant a request for additional Witnesses.

Putting that interpretation upon the matter, Mr. President, we shall not ask any amendment of the order at this time, for it is presumed that this court, like any court that wants to do justice in the premises, would, notwithstanding any rule to the contrary, or because of the absence of any positive rule making provision for such an emergency, direct the subpoena of witnesses if, in the judgment of the court, it ought to be done to meet the manifest ends of justice.

The President pro tempore said:

The Chair will state that the manager has stated the practice as it is understood and contemplated by the Senate in that regard.

485. Under a rule of the Senate subpoenas or other writs are signed by the Presiding Officer, whether the Vice President or President pro tempore, during session of the Senate sitting in trial of impeachment or in vacation.

On August 3, 1912,[1] in the Senate, sitting for trial of the impeachment of Robert W. Archbald, Mr. William J. Stone, of Missouri, propounded the following inquiry:

Mr. President, I should like to propound an inquiry. The Presiding Officer, in other words, the Senator who shall preside, I presume is to attach his signature to the subpoenas for witnesses Is that correct?

On response, the President pro tempore directed the Secretary to read the following rule of the Senate:

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules, or by the Senate and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

Mr. Stone then inquired:

Then under the rule the Vice President will be the Presiding Officer who would sign all writs.

Would the present occupant of the chair be clothed with that power during the vacation? Application for the issue of subpoenas for witnesses will be made during the vacation of the Senate, in all probability; probably in November. It puzzles me a little bit to know who would sign those writs.

The President pro tempore said:

The Chair does not think there is any trouble at all about it. Whoever is the presiding officer at the time the writ is required would, in the opinion of the present occupant of the chair, be clothed with that power. The Vice President, of course, will be during the vacation the presiding officer of the Senate, and if the Senate should indicate anyone else to be President pro tempore during that time, the power would be exercised in the first instance by the Vice President, or, if he should be under disability, by the President pro tempore, whoever he might be.

[1] Second session Sixty-sixth Congress, Record, p. 10140.

486. The Senate, sitting for the Archbald trial, ordered process to compel the attendance of a witness who had disregarded a subpoena duly served by the Sergeant at Arms.

Form of order for attachment of delinquent witness.

A dilatory witness who failed to appear until after attachment had been ordered was admonished by the President pro tempore.

On December 5, 1912,[1] in the Senate, sitting for trial of the impeachment of Judge Robert W. Archbald, Mr. Henry D. Clayton, of Alabama, of the managers on the part of the House of Representatives, said:

Mr. President, at the session held by the managers this morning, it was called to our attention that a certain witness who has been subpoenaed announced that he did not intend to come here unless brought on process issued by the Senate. It appeared yesterday, Mr. President, from reading the returns of the Sergeant at Arms, that Mr. J. H. Rittenhouse, an important witness in this case, had been regularly subpoenaed to attend and was required to be here yesterday. He was not here yesterday. He is not here to-day. He is the witness, who we are informed, said he would not come unless brought here by process of the Senate.

Therefore, Mr. President, I ask to have called the officer who served the subpoena upon the witness and prove the service. Then I shall ask for an attachment to bring him here.

Mr. James K. Julian, being called and sworn, testified, that as an employee in the office of the Sergeant at Arms, he had served J. H. Rittenhouse personally with a subpoena. The Sergeant at Arms was then directed to call the said James H. Rittenhouse, and on his failure to respond, Mr. Manager Clayton moved for an attachment, which was unanimously ordered, as follows:

Ordered, That an attachment do issue in accordance with the rules of the Senate of the United States for one J. H. Rittenhouse, a witness heretofore duly subpoenaed in this proceeding on behalf of the managers of the House of Representatives.

Later on the same day Mr. Manager Clayton stated that the witness, James H. Rittenhouse, had appeared and was now in the corridor and asked that he be admonished to be present until discharged.

The PRESIDENT PRO TEMPORE. The witness will be brought into the presence of the Senate.

James H. Rittenhouse appeared in the Chamber.

The PRESIDENT PRO TEMPORE. Mr. Witness, you are brought before the Senate to be admonished that you must scrupulously obey the orders you have received in the summons to appear here and not to absent yourself without leave of the Senate. You may now retire.

Thereupon Mr. Rittenhouse retired from the Chamber.

The PRESIDENT PRO TEMPORE. Does the manager on the part of the House desire that the order for attachment be vacated?

Mr. Manager CLAYTON. I ask that that be the course pursued.

The order for the attachment was then vacated.

487. The posture and position of managers and counsel in trials of impeachment has been left to their own judgment and preference.

---

[1] Third session Sixty-second Congress, Senate Journal, p. 318; Record, p. 152.

On December 4, 1912,[2] in the Senate, sitting for the trial of the impeachment of Robert W. Archbald, Mr. Worthington, of counsel for the respondent, inquired:

Mr. President, may I ask a question? The practice differs. In some courts it is required that counsel examining a witness shall stand; but it is not customary where I have been; and I presume it is a matter about which the examining counsel or manager may use his judgment.

The PRESIDENT PRO TEMPORE. Absolutely, on both sides. The managers and counsel may assume such posture as they prefer.

On the following day,[1] in concluding the examination of a witness, Mr. Edwin Yates Webb, of North Carolina, of the managers on the part of the House of Representatives, said:

It has been suggested that the few remaining questions which I am to ask this witness may be heard more distinctly by standing at this point in the Chamber.

Mr. Webb then concluded the examination standing in the central aisle.

488. Witnesses in an impeachment trial were required to stand when necessary in order to be better heard.

Witnesses whose testimony was audible when seated were permitted to testify from a seat at the Secretary's desk.

On December 4, 1912,[2] in the Senate during the examination of a witness, in the impeachment trial of Judge Robert W. Archbald, Mr. Edwin Yates Webb, of North Carolina, of the managers on the part of the House of Representatives, inquired:

Mr. President, is it desired that the witness shall sit or stand?

The President pro tempore said:

The present position of the witness is probably the one from which he can be best heard by the Senate.

Mr. Miles Poindexter, of Washington, also inquired:

Mr. President, is it required that the witness should remain standing while he is giving his testimony?

The President pro tempore said:

The Chair directed that he should, because he did not think that if the witness took his seat he could be heard on the other side of the Chamber.

It is for that purpose that it was directed that the witness should stand; otherwise, of course, he would be permitted to sit.

As the trial progressed, however, it appears that witnesses whose testimony was audible were provided with a seat at the desk of the Secretary.[3]

489. Discussion of the order in which witnesses should be sworn in trial of impeachment.

Procedure to be followed in the swearing of witnesses having been left to managers and counsel, witnesses were sworn as produced.

---

[1] Record, p. 152.

[2] Third session Sixty-second Congress, Record, p. 98.

[3] Record, p. 152.

On December 4, 1912,[1] in the Senate, preliminary to the presentation of evidence in the impeachment trial of Judge Robert W. Archbald, Mr. Henry D. Clayton, of Alabama, of the managers on the part of the House of Representatives, said:

We ask at this time that the Secretary read the whole list of witnesses on behalf of the managers on the part of the House of Representatives, and then after that list is read I will do as the Chair may suggest, either have all the witnesses sworn en bloc or have each one sworn separately as we produce him to testify. If the Chair would prefer that each witness be sworn separately as he is produced, that course will be followed.

The PRESIDENT PRO TEMPORE. The presumption is that the Senate will allow the managers to pursue their own course in that matter.

Mr. Manager CLAYTON. I would therefore ask that the witnesses be called, and all of them required to enter the Chamber who are present to-day and that the oath be administered to them.

The PRESIDENT PRO TEMPORE. The Secretary will call the names of those who are here.

The Secretary read the list of witnesses for the managers on whom service had been made.

Mr. Manager CLAYTON. I suppose, Mr. President, that it would be a difficult matter for the Secretary to call the names of witnesses.

The PRESIDENT PRO TEMPORE. Are the managers prepared to furnish the names of those whom they now wish to be sworn? If so, they will be called into the Chamber.

Mr. Manager CLAYTON. We will proceed to swear each witness as we produce him.

The PRESIDENT PRO TEMPORE. Very well; that course is preferred.

490. In the Archbald trial the Senate declined to admit and reserve decision on the admissibility of evidence to the admission of which an objection was pending.

Questions as to admissibility of evidence in impeachment trials are not debatable.

On December 4, 1912,[1] in the Senate sitting for the impeachment trial of Judge Robert W. Archbald, a question as to the admissibility of certain evidence having arisen, Mr. Miles Poindexter, of Washington, inquired:

Mr. President, I should like to inquire if it be within the rules of the Senate sitting as a court of impeachment to receive this evidence and to reserve a decision as to its admissibility? That practice is common in the courts. If we undertake to vote upon each objection to the testimony, or at least each important objection to the testimony of witnesses——

The President pro tempore answered:

The Senator has no right under the rule to discuss the question. The Senator has the right, if he so desires, to submit an order to the Senate, which would cover the point that he wishes to make.

Thereupon Mr. Poindexter submitted the following order:

Ordered, That the evidence be received and the decision as to its admissibility be reserved.

Mr. Poindexter proposed to debate the question, when the President pro tempore ruled:

The Senator has not the right to discuss it.

Mr. POINDEXTER. Have I no right to make an explanation?

The PRESIDENT PRO TEMPORE. No.

The question being submitted to the Senate, it was decided in the negative, yeas 3, nays 57, so the order was not adopted.

---

[1] Third session Sixty-second Congress, Record, p. 97.

[2] Third session Sixty-second Congress, Record, p. 106.

491. Questions as to admissibility of evidence in a trial of impeachment are by long-established custom, submitted by the Presiding Officer to the Senate for decision.

On December 4, 1912,[1] in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, Mr. Edwin Yates Webb, of North Carolina, of the managers on the part of the House of Representatives, offered in evidence a copy of an assignment of two options covering a culm bank, executed on September 5, 1911, to which Mr. A. S. Worthington, of counsel for the respondent, interposed an objection. After argument on the admissibility of the exhibit, the President pro tempore said:

Before taking action in regard to this question the Chair desires to make a statement to the Senate. Anticipating that questions of the admissibility of evidence would arise, the present occupant of the chair has examined former impeachment cases in order to ascertain what was the practice of Presiding Officers themselves in regard to deciding questions of this character or of submitting them to the Senate. Upon examination it is found in former impeachment cases that very liberally, to say the least, the Presiding Officer had availed himself of the privilege of submitting the matter to the Senate. In the Andrew Johnson impeachment case in particular, which was presided over by the highest judicial officer in the land, Chief Justice Chase, almost invariably every question as to the admissibility of evidence was submitted by him to the Senate for its determination. While the present occupant of the chair is not averse to taking responsibility in a matter that is alleged by the counsel to be peculiarly vital to the case, he feels that the matter should be submitted to the Senate. He is more inclined to that course by the fact that if one single Senator differed from the conclusion of the Chair he would have the right to have the vote taken by the Senate. Therefore, in this case the present occupant of the chair will submit to the Senate the question as to the admissibility of the evidence.

492. The President pro tempore ruled, in the Archbald trial, that counsel in examination might confine a witness within the limits of his interrogation, but witness should have opportunity either in direct examination or under cross-examination, to explain fully any answer made.

On December 6, 1912,[2] in the Senate sitting for trial of the Archbald impeachment, during the examination of a witness on behalf of the managers, Mr. Alexander Simpson, of counsel for the respondent, submitted an objection, saying:

I submit, Mr. President, when a witness is answering a question he has a right to complete his answer so as to make it clear to the Senate what his answer is, and the manager has no right to interrupt him in making a clear statement as to what his answer is. If the witness gets beyond that point, of course the manager has the right to interrupt him.

The President pro tempore ruled:

The Chair will rule that the manager has the right to conduct his examination in his own way and confine it within the limits of his questions, if he desires to do so, and that then the witness shall, before he leaves the stand, have full opportunity to explain any answer he has made. The manager in examining a witness has the right to confine him within the limits of the interrogation which he desires to submit, but the witness certainly must have the opportunity, either before the direct examination concludes or under cross-examination, to explain fully any answer which he may make.

---

[1] Third session Sixty-second Congress, Record, p. 106.

[2] Third session Sixty-second Congress, Record, p. 224.